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## II. BOOK REVIEWS.

**NEW ENGLAND TOWN LAW: a Digest of Statutes and Decisions concerning Towns and Town Officers.** By James S. Garland. Boston: The Boston Book Co. 1906.

This interesting book on New England town law is of wider interest than its title would seem to indicate. As the author says (p. 83), speaking of the town: "A scheme of local autonomy which has proved itself so well suited to the genius of a great nation, and is so easily adapted to the changing needs of its people, deserves not only the highest praise as an instrument of government, but as an object of study challenges the best thought of students of political institutions."

Examination of the book will show that it is full of materials for the student of our political institutions. It is, so far as the writer knows, the first attempt to gather into one book the town laws of all the New England states, laws copied or imitated throughout the country wherever the town system has been adopted. It is therefore a source book on town laws. An introduction of 83 pages treats of the subject generally, giving an account of the formation of the first settlements in New England towns, townships, or more properly speaking, separate little colonies, by the union of which, under charters subsequently obtained from England, the New England colonies, afterwards states, were the result. In view of the prevailing tendencies of our courts of law to minimize the sphere of town power, it cannot be too strongly impressed upon all that these towns came first and the chartered colony came afterwards. There is no instance in New England of immigration of settlers bringing with them a charter with the intention of forming a colony in the sense of a state, but everywhere the immigrants formed separate little colonies or towns that by coalescence under some charter subsequently obtained from England formed, respectively, the colonies that later became the New England states.

In the history and the political development of these New England towns there is therefore sound historical foundation for the claim that within their own limited sphere, the towns enjoyed a certain limited sovereignty that has disappeared in the limited sovereignty assumed and accorded by the courts to the united colony that afterwards became the state. Mr. Garland does not profess to follow the steps by which the towns have lost their original inherent powers, and indeed the material for such a study does not exist in print. For the process was about completed when the success of the American Revolution gave to the states a legal prestige they had never had before. This process of loss of town power and of gain of colonial legislative power was going on from the beginning of the settlement of the country until the end of the Revolution, but no reports of the decisions of the courts on these questions are in print until the process was about completed at the time when the state constitutions and the United States Constitution were adopted. He who would study this subject must go back of the printed reports of decided cases, and if they are still preserved he must study the records of the unreported cases from 1620 to about 1790.

The work under review treats only of town law as it exists in print, in the revised and general statutes of the New England States. After a general introduction, the work is divided into sections treating of the town laws of each New England state, prefacing each with introductory matter. The section on Massachusetts consists of 158 pages, divided into consideration of laws relating to Assessors of Taxes, Caucuses and Primaries, Collector of Taxes, etc. A section on the town laws of Maine of 151 pages, one on those of New Hampshire of 116 pages, one on those of Vermont of 140 pages, one on those of Rhode Island of 127 pages, and one on those of Connecticut of 119 pages, all similarly subdivided under appropriate heads, complete the volume of nearly 900 pages. For some reason not apparent or explained, the book is not consecutively paged, and there is no table of cases, although many are appropriately cited under the topics discussed. Nor is there any statement of "contents," its place being supplied by an index.

The book will prove to be of value to the practical man and also to the philosophical student of New England town law. The author states both sides of questions that are disputed, leaving the person using the book to come to his own conclusion. This is in accord with the prevalent view that it is no part of the duty of a writer on law topics to point out what he thinks the law should be. There is room, however, for a difference of opinion on this subject.

A. M. E.

**THE ELEMENTS OF JURISPRUDENCE.** By Thomas Erskine Holland. Tenth Edition. Oxford University Press: New York and London. 1906. pp. xxv, 443.

The two preceding editions of this classical treatise have already been reviewed in the *HARVARD LAW REVIEW*, and little need be added as to the general excellence of the treatise. We may say that Professor Holland's general analysis of the law is rather dictated by historical accidents of growth in the English law than by fundamental legal principle; that his chief division into public and private law is neither required by theory nor useful in practice, being in substance a division between all normal and most abnormal law, on the one hand, and a single branch of abnormal law on the other; and that his use of foreign law for comparison is not of the underlying principles of such law, but of the definitions of speculative writers. But with all said which can fairly be said in criticism of the work, it is easily the clearest, the soundest, and the best of all works on jurisprudence in the English language; and that lawyers and students of law appreciate it as such is shown by its rapidly issued new editions.

In this edition not much has been added to the discussions in the text, but many recent cases have been added to the notes. Important and fundamental questions have been at issue since the last edition. The right to one's livelihood, as threatened by trade combinations (*Allen v. Flood* and *Quinn v. Leatham*) is rather non-committally discussed (p. 180); the quasi-corporate trades union (*Taff Vale Ry. v. Amalgamated Society*) is noticed (p. 333); the tendency of Cape Colony to break away from the strict Roman-Dutch law as to "cause" or consideration for a contract is stated (p. 275). This phenomenon might be recognized as common where the common law and the civil law come into juxtaposition, as in Louisiana and Quebec.

On one point the reviewer wishes to make his protest. Professor Holland mentions the common law as a species of customary law (p. 51). This it seems not to be. The common law took its origin almost, one might say, at a single historical moment — when Henry II, having actually gained general jurisdiction for his judges, instructed them in exercising this new jurisdiction, to apply as law a system of justice which should be based not only upon the general principles of the customary law, but also on equity and justice. The common law from its inception has been based upon principles, not upon custom. It is to be compared in its nature not with the ordinary Germanic folk-law, but to the law administered in the middle ages by the Royal Court of Bohemia, described in Sigel's *Slavic Law*, pp. 72-83. "We remark only in England and Bohemia," that author writes (though he might perhaps have added to the number of examples), "an eager study of legal precedents and the application of scientific methods, worked out by the glossators and commentators, to home law practice." Customary law, properly so called, is of historic interest, but is hardly a fit field for legal science.

J. H. B.

**LIMITATIONS OF THE TAXING POWER.** By James M. Gray. San Francisco: Bancroft-Whitney Co. 1906. pp. lx, 1316.

The scope of this book is indicated fully by its secondary title: "A Treatise upon the Constitutional Law governing Taxation and the Incurrence of Public Debt in the United States, in the Several States, and in the Territories." The treatment is full and minute; and, as is necessary in dealing exhaustively with a